

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 06-10861
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

DEREK ERNEST AUSTIN

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:05-CR-1-ALL

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Derek Ernest Austin appeals the 120-month sentence imposed following his guilty plea conviction for being a felon in possession of ammunition. He argues that his sentence is unconstitutional in light of *United States v. Booker*, 543 U.S. 220 (2005), because it was based on facts not presented to a jury and to which he did not admit. The Government seeks to enforce the appeal waiver provision in Austin's plea agreement and moves for summary affirmance or dismissal.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Austin's appeal waiver was knowing and voluntary, and therefore, the waiver is enforced. See *United States v. Melancon*, 972 F.2d 566, 567-68 (5th Cir. 1992). Moreover, Austin's argument does not come within one of the enumerated exceptions to his appeal waiver. As such, we do not address the merits of Austin's challenge to his sentence.

The judgment of the district court is **AFFIRMED**. The Government's motion for summary affirmance is **GRANTED**. The Government's motion to dismiss is **DENIED**. The Government's alternative motion for an extension of time is **DENIED** as moot.